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U.S. Department of Homeland Security
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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

APR 07 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The applicant is a native and citizen of Nicaragua who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254.

The director determined that the applicant failed to respond to a request for additional evidence. The director, therefore, denied the application due to abandonment, pursuant to 8 C.F.R. § 244.9(c).

On appeal, the applicant submits additional evidence of her residence in the United States. No evidence, however, was furnished to establish that she was eligible for late initial registration.

The record reflects that the applicant filed her TPS application on July 1, 2002. She was requested on October 20, 2002, to submit evidence that she: (1) has been continuously physically present in the United States from January 5, 1999 to the date the application was filed; and (2) was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. In her request, the director listed acceptable evidence the applicant may submit to establish physical presence. She also listed the criteria the applicant must meet in order to be eligible for late filing, pursuant to 8 C.F.R. § 244.2(f)(2). The applicant was granted 30 days from the date of the request in which to submit evidence in support of the application and in opposition to the denial. She was advised that if all requested evidence was not submitted by the required date, the application would be considered abandoned and, accordingly, would be denied.

8 C.F.R. § 103.2(b)(13) provides that if all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5.

The director denied the application on December 18, 2002, due to abandonment pursuant to 8 C.F.R. § 244.9(c). An appeal was subsequently filed by the applicant. However, there is no appeal of the director's decision in the present case.

Furthermore, 8 C.F.R. § 103.3(a)(2) states, in pertinent part, that the affected party shall file an appeal, with fee, including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

8 C.F.R. § 103.3(a)(2)(v)(B)(1) states, in part:

An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Additionally, 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states, in part:

If an untimely appeal meets the requirements of a motion to reopen as described in § 103.5(a)(2) of this part or a motion to reconsider as described in § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The applicant's appeal does not meet the requirements of a motion.

8 C.F.R. § 103.5a(b) states, in part, that whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing.

The record reflects that the director denied the application due to abandonment on December 18, 2002. Although the applicant was advised that a denial due to abandonment may not be appealed, but that she may file a motion to reopen, the applicant filed an appeal that was received, with fee, at the Texas Service Center on January 31, 2003, approximately 13 days after the director's decision.

Accordingly, the appeal will be rejected.

ORDER: The appeal is rejected.